

# China's Judicial Reform

---

—From the perspective of judicial protection of intellectual  
property rights

**Wang Chuang, Judge  
Supreme People's Court**

2016.03

# ➤ Contents

---

- I. Setting and operation of intellectual property courts
- II. Case guidance system of Chinese courts
- III. Judicial interpretation about disputes over patent infringement



# ➤ I. Setting and operation of intellectual property courts

---

- ◆ In November to December 2014, intellectual property courts were set up in Beijing, Shanghai and Guangzhou one after another

(I) Personnel and institution building is completed

(II) Judicial work is fruitful

(III) Judicial reform takes the lead

(IV) Three research bases were set up



◆ (I) Personnel and institution building is basically completed

◆ **Judge:** Specialized and professionalized

◆ **Institution:** Streamlined, efficient, flattened

Court	Judge	Average age	Education background	Years of judicial experience	Institution
Beijing	45	40	90%	10	7
Shanghai	10	43.6	90%	8.4	3
Guangzhou	23	45	87%	7	7



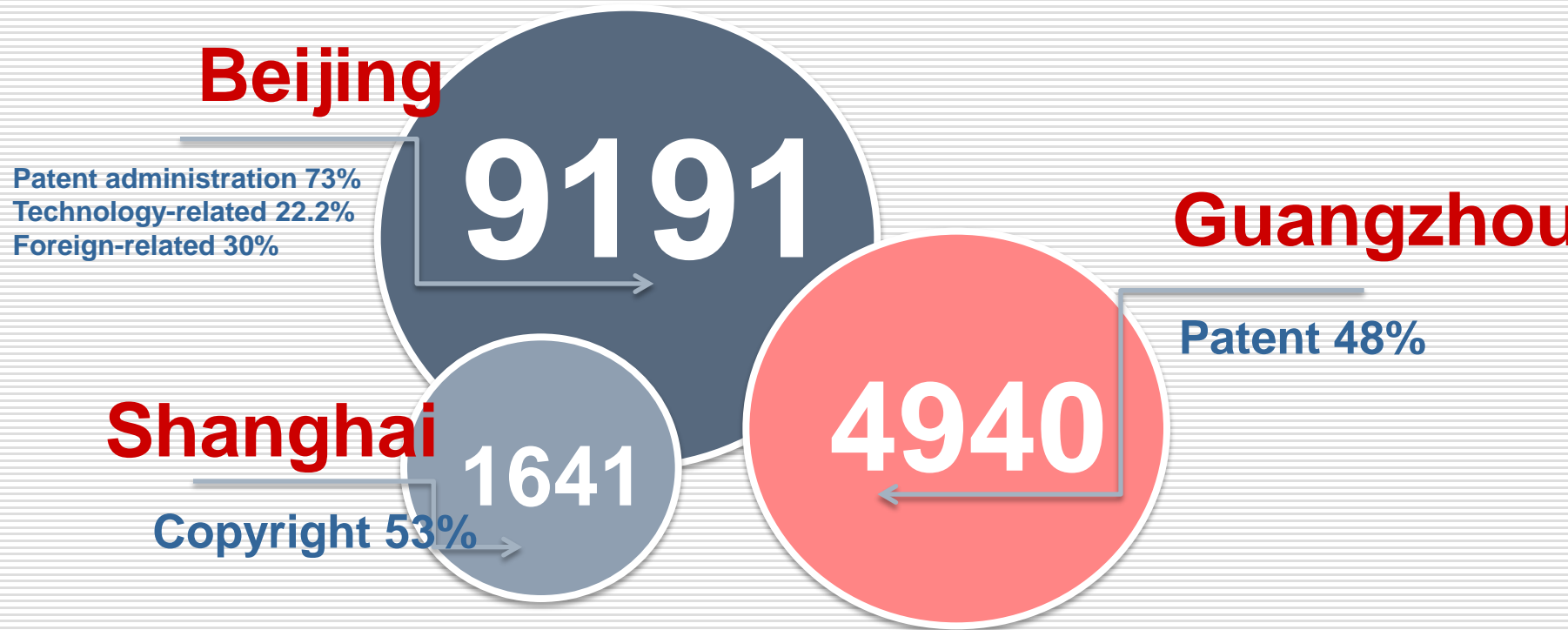
## ◆ (II) Judicial work is fruitful

---

1. More cases are accepted
2. Trial efficiency has obviously improved
3. Effect of trials is acclaimed



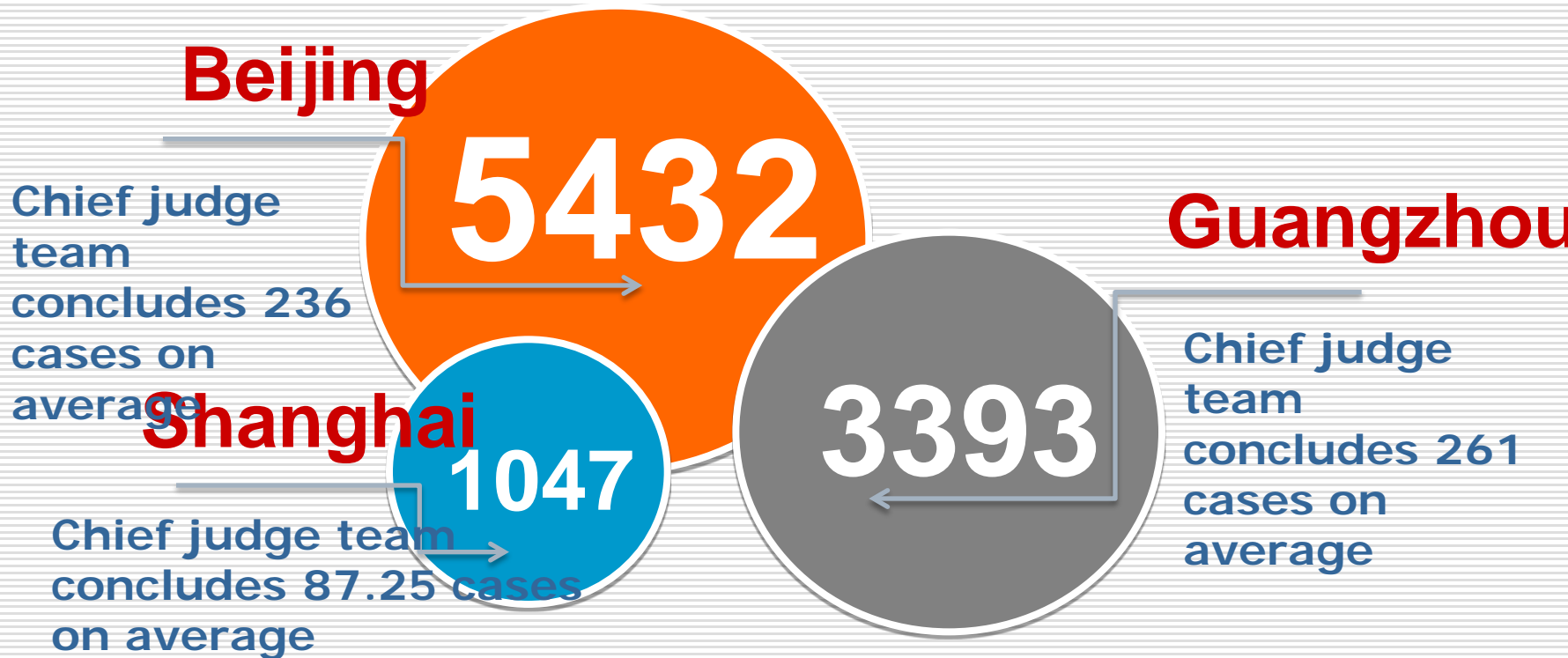
# ◆ Number of cases accepted (15772)



➤ **Statistical data as of December 31, 2015**



# ◆ Number of cases concluded (9872)



➤ **Statistical data as of December 31, 2015**



# ◆ Effect of trials is acclaimed

---

- **President/chief judges set examples in trials**
  - ◆ The president/chief judge strikes the first gavel, which invokes strong social response
- **Typical cases are tried collectively**
  - ◆ It demonstrates the attitude of increasing judicial protection and unify judicial standards
- **Increase judicial publicity**
  - ◆ Press conference – put through court's official website and MicroBlog and set court's open day





# ◆ (III) Judicial reform takes the lead

---

- 1. The dominant role of judge is highlighted**
  - ◆ 1+1+1 trial team ◆ Cancel literal trial system
  - ◆ Establish presiding judge's joint conference system
- 2. Case handling by president/chief judge becomes a normal phenomenon**
  - ◆ Try difficult, complicated and new cases
  - ◆ President's court session week · conclusion account for 11% of all cases
- 3. Change the function of judicial committee**
  - ◆ Only decide law application issue · form a collegiate bench to try major cases



## ◆ (IV) Four research bases were set

---

### 1. Beijing: IP case guidance and research base

- ◆ Principle: Informatiation, standardization, theorization, openness

### 2. Shanghai: Judicial IP protection international exchange base

- ◆ Hold world jurist conference
- ◆ Hold IP and international trade forum

### 3. Guangzhou: IP protection and market value research base

- ◆ Study how to resolve the judicial issue of high cost of right maintenance and low amount of compensation



## ➤ **II. Chinese court case guidance system**

---

- ◆ **The Supreme People's Court issued the Provisions on Case Guidance Work in 2010**

**(I) Nature and effect of guiding cases**

**(II) The guiding case issuance mechanism**

**(III) IP case guidance system**



# ◆ (I) Nature and effect of guiding cases

---

## 1. Nature: same as judicial interpretation

- ◆ Adopted after discussion and issued in a unified way by the Judicial Committee of the Supreme People's Court
- ◆ Have a guiding role for judicial work of courts across the country

## 2. Effect: Applied as reference in trials

- ◆ Have strong binding force on similar cases
- ◆ For cases to which it is not applicable, the original sentence may be changed or retrial may be held



# ◆ (II) Guiding case issuance mechanism

---

## 1. Working mechanism

- ◆ Case guidance work office of the Supreme Court

## 1. Recommenders

- ◆ All judicial tribunals and high courts of the Supreme Court
- ◆ NPC members, CPPCC members, experts and scholars, lawyers, social elites, etc.
- ◆ Set a committee of experts: engage 60 famous professors of all specialties from the academic circle



# ◆ (II) Guiding case issuance mechanism

---

## 3. Selection procedures

◆ Preliminary review (case guidance office) --- Seek for opinions (judicial tribunal of supreme court, ministries and commissions, industry associations, experts) --- Discussion (study room) --- Consideration (judicial committee of Supreme Court) --- Issuance (supreme court's bulletin and official website and people's court daily)

## 4. Style & format

◆ Seven factors: Titles – key words – key points of judgment, relevant articles of law – basic details of case – result of judgment – grounds of judgment



# ◆ (III) IP case guidance system

---

## ➤ Diversified case guidance system

- ① **Issue typical cases:** Ten major cases · ten major innovations · five typical cases · live court trial
- ② **Issue annual report:** Supreme court's judgment standards and judicial orientation have been organized since 2008
- ③ **Establish research base:** Intelligent collection · case identification · theoretical study · integrated service
- ④ **Innovate guidance mode:** Rules Restatement Guidance · Minutes of chief judge's joint conference

## ➤ Function and influence

- ◆ Have influence and attract attention in court system, academic world, industry world and abroad
- 



# ➤ III. Basic information about infringement of patent

---

## ➤ Background and process

- ◆ **Background:** Encounter new issue · Face new situation · Respond to new expectations
  - ◆ **Process:** Seek for opinions · Receive more than 400 amending advices from all circles of China, U.S. government, ABA, Japanese franchise department and EU Chamber of Commerce in China · 15 amendment drafts

## ➤ Main content and characteristics

- ◆ **Main content:** Interpretation of claims · indirect infringement · defense of legal source · injunction · computation of damages, etc.
- ◆ **Three characteristics**





# ◆ Characteristic I: Stick to issue-orientation

---

- ✓ Strengthen patent protection and solve the problem of “long duration, difficult proof taking, and low compensation”
  - **NO.2 The “rejection judgment first and separate action” system:** After the patent review committee gives a decision on declaration of invalidation, the court trying the infringement case can give a verdict of “dismissal of action”, without waiting for final result of administrative litigation, and the patentee can “bring a separate suit”.
  - **NO.27 Improve compensation amount proof rules:** In light of provisions in Article 63.2 of *Trademark Law* regarding evidence obstruction, according to preliminary proofs of the patentee, the burden of proof about infringer’s profits is assigned to the infringer.
  - **NO.28 Recognize amount of agreed compensation.** If the infringer and patentee agree upon the amount of compensation in advance, the patentee may claim for the amount of compensation as agreed; if the amount claimed by the infringer is too high, the people’s court will not adjust such amount, so that the orientation of increasing compensation will be strengthened.



# ◆ Characteristic 2: Stick to compromised interpretation principle

---

- ✓ Enhance publicity and demarcation role of claims and strengthen the definiteness of scope of IP protection to provide social public with definite legal expectations.
  - **NO.5,NO.10, NO.12:** Targeted to preceding characteristics, preparation method in patent claims, and emphasized expressions in numeric features, and it's stipulated that the said expressions can limit the scope of patent protection.
  - **NO.7. Define interpretation rules for claims of enclosed combinations.** The Patent Review Guide stipulates that claims of enclosed combinations shall not include any other component outside the characteristics stated in the claims, unless it is unavoidable constant impurity. Provision in Article 7.1 of the interpretation is consistent with the Patent Review Guide. As combinations in the traditional Chinese medicine field are fundamentally different from those of chemical medicine in terms function mode and production process, clause 1 is generally not applicable to the interpretation method for claims of traditional Chinese medicine combinations, and instead, whether they have substantive influences is considered.



# ◆ Characteristic 3: Stick to interests balance principle

---

- ✓ Clarify the legal boundaries of patent rights and other civil rights in order to protect patentee's legal interests while avoiding improper expansion of patent right

➤ **NO.25 Injunction not applicable to bona fide user.** Practice dispute over Article 70 of Patent Law: whether bona fide user should cease its use after proving legality of source and having paid reasonable consideration? Grounds: first, user is bona fide; second, actual payment of double consideration; third, Trips agreement does not require that bona fide user's use should be prohibited; fourth, the legal source defense system is intended to strike infringement source, i.e. maker, but should not obstruct transaction safety; and fifth, it is endorsed by legislative department.

➤ **NO.26 Injunction not applicable to national interest and public interest.** Generally, infringer shall stop infringement. However, if the injunction will harm national or public interest, the court may withhold the injunction, instead, it may impose payment of reasonable royalty. It should be noted that this is an exception.



# China's Judicial Reform

---

—From the perspective of IP judicial  
protection

Wang Chuang, Judge  
Supreme People's Court

March 2016